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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 376

JOHN P. PETERS,

Petitioner,

vs.

OVETA CULP HOBBY, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

BRIEF OF ENGINEERS AND SCIENTISTS OF AMERICA, AS *AMICUS CURIAE.*

ENGINEERS AND SCIENTISTS OF AMERICA,
Amicus Curiae,

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346

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INDEX.

PAGE

THE INTEREST OF ENGINEERS AND SCIENTISTS OF AMERICA 1

STATEMENT OF FACTS 3

THE ISSUES 3

ARGUMENT 4

POINT I.—A Federal Government loyalty or security hearing is required by the Constitution to accord with due process 4

POINT II.—The hearing afforded to petitioner did not accord with due process 7

CONCLUSION 19

Table of Cases Cited.

	PAGE
Bailey v. *Richardson*, 182 F. 2d 46 (C. A. D. C.), aff'd 341 U. S. 918	8, 12
Fitzgerald v. *Sperry Gyroscope Co.*, 22 Labor Arbitration Reports 186, aff'd 131 N. Y. S. 2d 873	16, 17
Joint Anti-Fascist Refugee Committee v. *McGrath*, 341 U. S. 123	6, 7, 8
Korematzu v. *United States*, 323 U. S. 214	3
Matter of Arma Corporation, 22 Labor Arbitration Reports 325	17
McNabb v. *United States*, 318 U. S. 332	18
Ohio Bell Telephone Co. v. *Public Utilities Commission*, 301 U. S. 293	8
Shaughnessy v. *United States ex rel. Mezei*, 345 U. S. 206	3, 16
Sperry Gyroscope Co. v. *Engineers' Association*, 279 App. Div. 630, 107 N. Y. S. 2d 800, aff'd 304 N. Y. 582, 107 N. E. 2d 78	17
Truax v. *Reich*, 239 U. S. 33	5
United States v. *Nugent*, 73 Sup. Ct. 991	3
Wieman v. *Updegraff*, 344 U. S. 183	4, 17

Statute Cited.

U. S. Supreme Court Rules, Rule 42	1

MISCELLANEOUS.

PAGE

Barth, "How Good Is An F. B. I. Report", Harper's Magazine, March 1954 ..... 9, 13, 14

Bontecou, Eleanor, *The Federal Loyalty-Security Program* (Cornell University Press, 1953) 13

Cardozo, Benjamin, *The Nature Of The Judicial Process* (Yale University Press, 1921) pp. 93-94 18

Coke, *Second Institutes* (1656), p. 48 18

Daily Labor Report, Nos. 235, 236 and 239 (1954) 17

Executive Order 10450 14

Executive Order 10491 17

National Science Foundation, Press Release, October 2, 1954 10

New York Times, October 19, 1954, pp. 1 and 12 11

New York Times, December 10, 1954, pp. 1 and 30 12

New York University, *Seventh Annual Conference On Labor* (Bender Publishing Co., 1954) p. 476 14

Note, 191 A. L. R. 709 7

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The Interest of Engineers and Scientists of America.

This brief *amicus curiae* is filed pursuant to Rule 42 of the Rules of the Court, with the consent of petitioner and respondent.

The constitutional issue before the Court is the validity under the due process clause of petitioner's dismissal from federal government employment on the basis of a loyalty hearing in which there was no disclosure of investigatory information considered by the hearing board, no disclosure of the identity of confidential informants, and no opportunity to confront and cross examine unknown but adverse

informants. In that issue, the Engineers and Scientists of America has a direct interest.

We are a federation of thirteen labor unions who are the bargaining agents representing engineering and scientific professional and sub-professional employees of companies throughout the nation engaged in work closely related to defense activities. Among such employing companies are: Western Electric Company, Radio Corporation of America, the Lockheed, Boeing, and Convair Companies in the aircraft industry, Sperry Gyroscope Company, Minneapolis-Honeywell Regulator Company, Arma Division of American Bosch, the Tennessee Valley Authority, etc.

Included in our membership are Aerodynamics Engineers, Dynamics Engineers, Electronics Systems Engineers, Wind Tunnel Test Engineers, Stress Engineers, Physicists, Chemists, and Metallurgists. Their work is of a highly specialized nature, finding industrial application almost entirely in defense or defense connected employments in the aircraft, electrical machinery, electronics, and scientific instruments industries.

Under the Industrial Personnel Security Program of the United States Department of Defense, the scientist engaged in private employment in defense industry is subject to dismissal from his private employment on the basis of the same kind of hearing afforded petitioner and is not granted any of the procedural rights denied petitioner. Petitioner was dismissed from non-sensitive employment. Our scientists are engaged in highly sensitive employment directly concerned with classified matters of military secrecy. If the loyalty hearing accorded to petitioner suffices under our Constitution, the Defense Department will continue to force the security dismissal of our engineers and scientists without the opportunity for confrontation and cross-examination, and without disclosure of the

material considered or the confidential informants listened to; in other words, with no knowledge of the "evidence" against them or its source.

We are before this Court because of our conviction that the narrowing or elimination of due process reflected in this Court's decisions in the alien, Nisei, and conscript cases,[1] will, if extended to all government positions, inevitably be applied to the bulk of our entire working population. In time of emergency, substantially all industrial activity is defense related.

Statement of Facts.

For the purpose of our presentation, we adopt the Statement of Facts presented by the petitioner.

The Issues.

Our argument is directed to the following issues:

1. Whether a federal government loyalty or security hearing is required by the Constitution to accord with due process; and

2. Whether a hearing accords with due process, if the accused is not informed of the identity of his accusers, and not provided with the opportunity to confront and cross-examine his accusers, and decision is made on consideration of information not revealed to him.

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[1] *Shaughnessy* v. *United States ex rel. Mezei*, 345 U. S. 206 (1953); *Korematsu* v. *United States*, 323 U. S. 214 (1944); *United States* v. *Nugent*, 73 Sup. Ct. 991 (1953); respectively.

ARGUMENT.

POINT I.

A Federal Government loyalty or security hearing is required by the Constitution to accord with due process.

We do not burden the Court with repetition of the able argument presented by counsel for the petitioner. We do suggest some facts and considerations which, in our view, are pertinent and deserving of emphasis and attention.

1. *First, this case is not resolved by the deceptively simple thought that no one has a right to public employment.* Public employment, alone, means millions of citizens employed by the federal government, and millions more employed by state and local governments. Even as to these public employees the assertion of no right to public employment only obscures the issue by a "facile generalization." The Court, in *Wieman* v. *Updegraff*, 72 Sup. Ct. 215, 344 U. S. 183 (1952), said (at 344 U. S. 191):

> "We are referred to our statement in Adler that persons seeking employment in the New York public schools have 'no right to work for the State in the school system on their own terms'. To draw from this language the facile generalization that there is no constitutionally protected right to public employment is to obscure the issue . . . We need not pause to consider whether an abstract right to public employment exists. It is sufficient to say that constitutional protection does extend to the public servant whose exclusion pursuant to statute is patently arbitrary or discriminatory."

But resolution of this case will determine the constitutional protection against loss of private employment, or

lack of such protection, for citizens generally throughout the country.

The Government's Industrial Personnel Security Program is the twin of the Government's old federal employees loyalty program and more recent federal employee security program. These programs have substantially the same provisions, and are all precisely alike in the type of hearing permitted. Hence, it is not just the public employee who seeks protection here, but every man and woman, scientist, engineer, professional, or just plain worker employed privately in our vast defense industry and subject to dismissal, like petitioner, when the Government's security clearance is denied.

The total figure for those thus affected is not obtainable. Plainly, though, resting on the determination of petitioner's rights are the rights to livelihood of a large part of our working population; and the area of private employment affected is a major part of American industry. Yet, since *Truax* v. *Reich*, 239 U. S. 33, 41, the right of the citizen, indeed also the alien, to due process protection in pursuit and retention of his lawful livelihood can scarcely be doubted.

2. *The assertion, even when well documented, that the Government may dismiss employees for a variety of reasons without a hearing of any sort is no answer to dismissal pursuant to a highly publicized program of rooting out persons branded as disloyal.* Discharge from public or private employment may stem from a multitude of reasons or from none at all and carry with it a minimum of stigma. This cannot be said of dismissal arising out of a determination of disloyalty when it has been held out to the public that such determination resulted from a hearing. The facade of a hearing in the disloyalty program suffices to convince the public that actual disloyalty has been proved.

More than the loss of a particular job is involved. Lost, also, is the ability to obtain employment in that large segment of private industry performing government contractual work. Lost, too, are reputation, opportunity, community standing, pursuit of happiness, the carefully built structure of an entire life. These are the results of a determination of disloyalty or security risk. They are equal in all respects to the consequences of a verdict of guilty after trial, except that no rehabilitation is available.

The weight of a governmental determination of disloyalty or security risk cannot, realistically considered, be dissipated by the lonely cry that there was no fair hearing, that the result was dictated by information from informants unknown[2] even to the agency imposing the brand.

Fair hearing, we submit, is a concept not generally understood by those Americans who have yet to suffer from lack of it.

What this Court said in regard to organizations in *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U. S. 123, is doubly applicable to individuals who do not possess even the facilities of organizations to publicize the complete circumstances of an adverse determination:

> "When the acts of . . . the Loyalty Review Board are stripped of the Presidential authorization claimed for them by the respondents, they stand, on the face of these complaints, as unauthorized publications of admittedly unfounded designations of the complaining organizations as 'Communist'. Their effect is to cripple the functioning and damage the reputation of those organizations in their respective communities and in the nation. The complaints, on that basis, sufficiently charge that such acts violate

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[2] This degree of protection by anonymity extends to the occasional informant, who may be a disgruntled neighbor, a competitor, someone with a real or fancied grievance, a vicious scandalmonger, a jealous person motivated by any sense of instability, etc.

> each complaining organization's common law right to be free from defamation. 'A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.' Restatement, Torts, Sec. 559" (341 U. S. at p. 139).

As recognized in the *Joint Anti-Fascist Refugee Committee* case, the well-established right to be free from defamation (see Note, 191 A. L. R. 709) is invaded by the Government when Government action, without a fair hearing, "tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." The language just quoted precisely describes what happened to petitioner and all others dismissed under the Government's loyalty and security programs. In accordance with the doctrine of *Joint Anti-Fascist Committee* such dismissals must be based on due process, *i. e.*, a fair hearing.

POINT II.

The hearing afforded to petitioner did not accord with due process.

1. *Unlike some due process questions, the question here needs no "balancing of interests"; for the hearing afforded to petitioner could not be considered a due process hearing in any circumstances.*—Petitioner's hearing was required to accord with due process (Point I, *supra*). Due process, at the very minimum, requires fair notice and opportunity to defend. Petitioner had, and the many millions of citizens, publicly and privately employed, now subject to the Government's security programs, have no opportunity to defend in any meaningful sense. Petitioner was never informed

of the identity of his accusers; was never afforded a opportunity to confront and cross examine them; and wa dismissed on a consideration of information not reveale to him. So he was deprived of the very guts of a fa hearing.

Since we deal here, essentially, with serious prejudi to the basic right of making a lawful living, the observ tions of a unanimous Court, speaking through Mr. Justi Cardozo in *Ohio Bell Telephone Co.* v. *Public Utilities Com mission*, 301 U. S. 293, 303, are particularly pertinent:

> "From the standpoint of due process—the pr tection of the individual against arbitrary action a deeper vice is this, that even now we do not kno the particular or evidential facts of which the Com mission took judicial notice and on which it veste its conclusion. Not only are the facts unknown; the is no way to find them out. . . . *This will never do hearings and appeals are to be more than empt forms.*" (Italics supplied.)

And see to the same effect the comment of Mr. Justi Douglas on *Bailey* in his concurring opinion in the *Joi Anti-Fascist Refugee Committee* case (341 U. S. 123, 180

2. *If we balance the interests involved here, the hea ing afforded petitioner still lacks due process.*—In *Baile* the Government emphasized and a majority of the cou below accepted "national security" as paramount. S *Bailey* v. *Richardson*, 182 F. (2d) 46 (C. A. D. C.), aff'd 3 U. S. 918.

Observe, first, that no military or national defen secrets, as such, would be divulged if accused employees a permitted to confront and cross examine their accuser The worry is that informers would be discouraged fro supplying further information if they are subjected to t

ordeal of testifying. It is respectfully doubted whether this consideration, of some importance in easing the burden of investigative agencies[3], overrides the denial of fundamental rights to a very large number of citizens. As Judge Albert Reeves, in the *Coplon* case, said:

> "If it turns out that the Government has come into court exposing itself, then it will have to take the peril. If it embarrasses the government to disclose relevant material, then the government ought not to be here."[4]

More important considerations of national security indicate the need for application of due process standards. In a very substantial sense, it is the employee in public and private employment who contributes the secrets to be guarded in the national security.

The achievements, for example, of the engineers and scientists represented by ESA in safeguarding the security of the nation against possible enemy attack are extremely significant. They have participated in the planning, designing and construction of long-range strategic jet bombers, such as the B-47, B-52, XB-58 "Hustler," as well as jet fighters, vertical take-off fighters, and turboprop and turbojet transports. They have also made notable contributions in the field of aircraft equipment, such as automatic pilots and landing aids, flight instruments, central fire control systems and gas turbine, ramjet and atomic-powered engines. The giant search radar systems now being

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[3] In our collective, professional experience we have yet to see a loyalty or security case in which an F. B. I. agent working internally in the Communist Party was indicated as the informer rather than a neighbor, working associate, college classmate or the like. Like any other citizen, such a casual informer should not be protected because he does not want to testify. Rather, should his statements be disregarded as unreliable for that reason.

[4] See Barth, "How Good Is an F. B. I. Report?", Harper's Magazine, March 1954, p. 28.

developed, which will be used to screen the United States off the Atlantic and Pacific Coasts, and in the northern part of Canada, represent in large measure the highly specialized abilities of engineers and scientists employed in defense plants. A most important area of national defense, i. e. the NIKE defensive guided missile (ground to air), now under construction around all major cities of the United States to defend them from enemy bombing attacks, is being achieved through the active participation of our engineers and scientists.[5]

Today the Government stands in vital need of such services. In the fiscal year 1955, federal agencies will obligate an estimated 1.99 billion dollars for research and development activities. Research and development for national security accounts for about 85% of the federal science expenditures. The Department of Defense accounts for approximately 75% of the funds appropriated by federal agencies for research and development.[6]

As of January 1952, the latest date for which figures are available, approximately half of the research engineers and scientists were employed on projects sponsored by federal agencies—in nearly every case the Department of Defense or the Atomic Energy Commission.

Yet the contribution of such public and private employees is prejudiced by governmental loyalty and security programs lacking in the minimum fairness that fulfills due process. The scientists of America are badly disturbed. Of that there can be no real doubt. The Federation of Scientists of America, the head of the National Academy of Scientists, and many of its leaders, have repeatedly challenged the lack in the Government's loyalty and security

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[5] This paragraph deals with non-restricted matters now in the public domain. Many more items are in restricted categories.

[6] Press Release, National Science Foundation, October 2, 1954.

programs of those procedural rights which Americans have rightfully come to regard as inviolate. Dr. Vannevar Bush, President of the Carnegie Institute and head of the Office of Scientific Research and Development in World War II stated before a Government Operations Sub-committee of the House of Representatives that the government's security risk program had demoralized the scientific community and had hindered the nation's weapons research programs. He added that the mutual respect between the military services and the scientific community achieved during World War II had been "almost destroyed, and one of the primary reasons was the security system."[7]

Dr. John von Neumann, mathematician and weapons expert of the Institute for Advanced Study of Princeton, New Jersey, recently appointed by the President to the Atomic Energy Commission, told the same sub-committee that the security program presented the "major problem" in the research and development field today. He said that the partnership between science and Government had been "damaged and endangered."

The Board of Directors of the American Association for the Advancement of Science, the largest and most influential group of related scientific organizations in the world, representing 256 scientific societies and academies with an aggregate membership of more than two million persons, in a statement published in the December issue of *Science*, the official publication of the organization, raised serious questions about the entire handling of the security program in so far as it related to the scientists of America.

This outstanding association insists that it is just as important to ask "What risk of delayed progress and diminished achievement is incurred in not employing a person?" as it is to ask "What security risk is incurred in employing such person?"

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[7] New York Times, October 19, 1954, pages 1 and 12.

Significantly enough, these authorities stated "that there simply are no such things as permanent scientific secrets."[8]

We respectfully suggest that the choice is not difficult between national security through achievement, which has been unquestionably brilliant, and national security through unfair procedure in elusive protection of secrecy, which has been brilliantly questionable.[9]

Pertinent to a consideration of national security is the fact, sometimes overlooked, that the state exists for its citizens and not vice versa. Hence, the balancing of interests requires notice of the heavy burden imposed upon petitioner and the many citizens in public and private employment now subject to the Government's security programs. Except infrequently and fortuitously, there is no protection against the bias of confidential informants.

For example, a Western Electric engineer caught a postman purloining Veterans Administration checks from his mail. When the engineer pressed charges against the postman resulting in his conviction and imprisonment, people living in the neighborhood of the engineer's home were aroused against the engineer because the postman had a large family and was apparently well liked. The immediate consequence of the engineer's perfectly proper act was the filing of anonymous reports with the F. B. I. by several of the engineer's neighbors regarding his home life, his general behaviour and his associations—all derogatory. The engineer was able to obtain ultimate clearance

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[8] New York Times, December 10, 1954, pages 1 and 30. And see also, in this same connection the statement of the American Association of Scientists, through its director, published in the New York Times, December 10, 1954, pages 1 and 30.

[9] For documentation of the fact that there have been many holes in the Government's dikes of secrecy, we respectfully refer the Court to the persuasive and eloquent presentation of the Solicitor General on the point in the *Bailey* case (pp. 48 to 55 of the Government's brief).

after much expense and effort only because he was in a position to associate the wholly unfounded accusations against him with the incident described above.

Likewise, there is no protection against mistakes in identity, and the bias or mistake of the investigator. In the recent *Chasanow* case, two key persons, recorded in the file as adverse, confidential informants, turned up at the security hearing to testify that they had been misquoted in all material aspects by over-zealous investigators interested only in adverse information.[10]

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[10] In view of the F. B. I.'s generally well-earned reputation, we may fairly consider F. B. I. reports to be better than those of other investigative agencies. The F. B. I.'s reports, not revealed to the employee, are usually accorded overwhelming weight by hearing boards and agency deciding officials. Such officials are impressed by the F. B. I. reputation, and, in any event, they are not supplied with the data for evaluation of the reliability of information furnished from undisclosed sources. But how good is an F. B. I. report?

Arguing against the surrender of F. B. I. reports to a Congressional Committee in 1941, Hon. Robert H. Jackson, at that time Attorney General, said:

> "Investigative reports include leads and suspicions and sometimes even the statements of malicious and misinformed people." (Reported in "How Good Is An F. B. I. Report" by Alan Barth in *Harper's Magazine*, March 1954, page 46.)

In her careful study, The Federal Loyalty-Security Program, published by the Cornell University Press in 1953, Eleanor Bontecou, a member of the New York Bar, provides interesting excerpts from transcripts of Loyalty Board proceedings, which suggest that F. B. I. reports contain some strange material.

In the Senate debate which took place in March 1953 over the confirmation of Charles Bohlen to be Ambassador to Russia, it was stated that the Security Director of the State Department, R. W. Scott McLeod, had found that "he could not clear Mr. Bohlen on the basis of the F.B.I. report." After Secretary of States Dulles had summarily overridden Mr. McLeod, one of the members of the Foreign Relations Committee, which unanimously approved the nomination, Sen. Guy M. Gilette gave the Senate the following account of one of the several items of derogatory information about which Secretary Dulles had told the Committee in detail:

> "One of the derogatory reports—and it was a derogatory report, and Senators may evaluate it, along with members of the Committee on Foreign Relations—concerned a

Indeed, there is no protection. Petitioner complains of the deprivation of the most basic elements of a fair hearing. But that deprivation occurred, and occurs today, in a relevant context providing none of the other safeguards typical of a full hearing. In the Government's loyalty and security programs, the standards of decision are vague—"doubt as to loyalty," "clearly consistent with the security of the United States." One can get out of those standards precisely what one puts into them. The "criteria" are even vaguer. Read, for example, section 8 of Executive Order 10450 which governs the federal employee security program. The charges are indefinite. Executive Order 10450, Section 8 (1) (i) provides the following criterion: "Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy." Since charges are required to be specific only insofar as "security considerations permit," charges like the following are not untypical.

> "Information at hand shows that you have attended meetings and actively participated in subversive organizations and have close associations with known members of the Communist Party."

"Security considerations" usually do not "permit" identification of these meetings as to time and place, on the

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person who said he possessed a sixth sense, in addition to the five senses all of us possess. * * * This man said that he looked at Mr. Bohlen and, with this sixth sense of his, he determined that Mr. Bohlen was a man who did have in the back of his mind such a tendency towards immorality as to make him unfit" (Barth, *supra*, pp. 27-38).

It all brings to mind an old doggerel:

> "Absolute evidence have I none,
> But my aunt's charwoman's sister's son
> Heard a policeman on his beat
> Tell a housemaid in Downing Street, etc."
>
> (New York University's Seventh Annual Conference on Labor, Bender Publishing Company, page 476.)

ground that this might supply information which could lead to the identification of informers. Indeed, it is not unusual for the Security Board to refuse to identify even the alleged "subversive organizations" on the same ground. Requests for particulars are generally denied. At least one security Hearing Board has ruled that the description of a person in a charge as a "known communist" means "known to the Government as a Communist" and, therefore, cannot be controverted—even by a sworn denial and proof that the person is currently employed in another agency of the Government.

Witnesses favorable or adverse, cannot be subpoenaed. Industrial personnel security hearings can be held only in New York, Chicago and San Francisco.

Security Hearing Boards are selected with considerable care and are protected by anonymity; but the decision rests in every case with the head of the agency concerned, a political officer responsive to misinformed political and public pressure (Cf. *Condon*); and generally that responsibility of the head of the agency is delegated to a subordinate political officer who may go further than his chief in protection of the Chief. The reasons for a hearing board's decision are not furnished to an employee, except by error as in *Chasanow*.[11] There is no provision for argument, written or oral, to the deciding officer. The employee may retain and appear with counsel; but counsel operates under the same burden as does the employee. Financial resources essential for the preparation of such defense as can be made are limited by an apparent average of not less than six months of no pay between charges, with suspension automatic, and final deci-

[11] The Chairman of the Security Hearing Board in the *Chasanow* case read the regulations as requiring the Board's reasons for decision to go to Chasanow. This was officially regarded as an error by the Navy Department; and, thereafter, the regulations were clarified so that no such errors would be made in the future.

sion. And all of this is kept from the light of day by provision for complete secrecy in protection of the employee.[12]

Such hearings are not held to punish for past conduct. Rather, the controlling consideration is fear of future behavior as guessed at from past, alleged conduct. This factor favors the fullest application of due process. As Mr. Justice Jackson so pungently observed:

> "The most scrupulous observance of due process, including the right to know a charge, to be confronted with the accuser, to cross-examine informers and to produce evidence in one's behalf, is especially necessary where the occasion of detention is fear of future misconduct, rather than crimes committed."
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> * * * * * *
>
> "It is inconceivable to me that this measure of simple justice and fair dealing would menace the security of this country. No one can make me believe that we are that far gone" (*Shaughnessy* v. *United States,* Dissenting Opinion, 345 U. S. 206, 225, 228).

Finally, but with diffidence, we suggest a consideration believed not to be amiss. Even with a free people, due process ever stands uneasily. And today in many fields the standing is precarious. Encouraged by the presence of the Government's Industrial Personnel Security Program, private employers arrogate to themselves the right to determine, without even the facade of a hearing, that employees are security risks. (*Fitzgerald* v. *Sperry Gyroscope Company,* New York Supreme Court, Special Term, Part I, New York County, 22 LA 186; aff'd. Appellate Division,

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[12] The absence of the procedural safeguards to which reference is made in the text is apparent on the face of the controlling governmental regulations. So far as it is not, citations from secret proceedings are not possible. However, counsel are officers of the Court, and have a collective professional experience in the handling of loyalty and security cases that is considerable.

First Department, 131 N. Y. S. 2d 873 (1954); *Matter of Arma Corporation,* 22 LA 325 (1954), Curtis G. Shake, Arbitrator); See also *Sperry Gyroscope Co.* v. *Engineers' Ass'n.,* 279 App. Div. 630, 107 N. Y. S. 2d 800 (1st Dep't.), aff'd, 304 N. Y. 582, 107 N. E. 2d 78 (1951). And local town boards hold "hearings" to determine the political qualifications of a person who applies for renewal of a license to deal in second-hand pianos.

Other constitutional rights falter in the general weakness. Cued by regulations issued under Executive Order 10450, as amended by Executive Order No. 10491 (which included the added criterion of refusal to testify before a Congressional Committee regarding disloyalty or other misconduct), large industrial employers, sometimes on their own volition and other times at the instigation of a U. S. Senate subcommittee, have discharged employees who pleaded the Fifth Amendment before such subcommittees.[13] Employees in many industries are required to sign loyalty oaths similar in form to that which this Court regarded as arbitrary and therefore unlawful in *Wieman* v. *Updegraff,* 344 U. S. 183 (1952). And even university debate of a touchy subject like recognition of Red China becomes questionable.

It becomes more and more true that no one is so highly placed in America, (e. g., Mr. Acheson) or so lowly placed in obscurity (e. g. Mrs. Moss) as to be certain that his reputation will not be ruined and his livelihood prejudiced tomorrow by a legislative hearing or other action lacking in due process.

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[13] For example, Bethlehem Steel, General Electric, Ingersoll-Rand; see *Daily Labor Report Nos. 235, 236 and 239,* December 6, 7, and 10, 1954. A Defense Department spokesman confirms reports that Bethlehem Steel has no classified contracts at the present time, *Daily Labor Report No. 239*

We won the war. But the greatest people and most powerful nation in the history of mankind remain frightened; and so liberty weakens.

We recall that "the history of liberty has largely been the history of observance of procedural safeguards." *McNabb* v. *United States,* 318 U. S. 332, 347 (1943); and that "every oppression against law, by colour of any usurped authority is a kind of destruction . . . and it is the worst oppression that is done by the colour of justice." Coke, *Second Institutes* (1656) p. 48.

The Court is called upon here to perform the greatest task of the judicial function:

> "The great ideals of liberty and equality are preserved against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments, the scorn and derision of those who have no patience with general principles, by enshrining them in constitutions, and consecrating to the task of their protection a body of defenders . . . Great maxims, if they be violated with impunity, are honored often with lip-service, which passes easily into irreverence. The restraining power of the judiciary does not manifest its chief worth in the few cases in which the legislature has gone beyond the lines that mark the limits of discretion. Rather shall we find its chief worth in making vocal and audible the ideals that might otherwise be silenced, in giving them continuity of life and of expression, in guiding and directing choice within the limits where choice ranges. This function should preserve to the courts the power that now belongs to them, if only the power is exercised with insight into social values, and with suppleness of adaptation to social needs."[14]

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[14] Cardozo, *The Nature of the Judicial Process* (Yale University Press, 1921), pp. 93-94.

Somewhere, sometime, the line of due process application to the loyalty-security field must be held by the judiciary in preservation of the liberty of a free people. The time is overdue; and the appropriate occasion is here.

Conclusion.

We respectfully urge that this Court reverse the judgment below and remand the cause to the District Court for the entry of judgment for the plaintiff, declaring that petitioner was improperly removed from his position as Special Consultant to the Public Health Service in the Department of Health, Education, and Welfare and that he is entitled to reinstatement upon the ground that his removal was effectuated without due process.

Respectfully submitted,

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